IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.35 of 2003
Judgment Reserved on:9.4.2007
Decided on: April 13, 2007.

Union of India & Ors. **…..Appellants.**

VERSUS

Tarsem Singh **…..Respondent.**

Coram

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants: **Mr.Janesh Mahajan, Central Govt. Counsel.**

For the Respondent: **Mr.Ajay Sharma, Advocate.**

Per Kuldip Singh, Judge.

This appeal has been directed against the judgment dated 6th May, 2003 passed by the learned Single Judge in CWP No.404 of 1997. For convenience the parties in this judgment are referred in the same manner as referred in the impugned judgment. The learned Single Judge allowed the petition with a direction to the respondents to grant disability pension to petitioner as per Rules with effect from the date he was invalidated out of Army service and to work out the arrears of pension in accordance with Rules.

2. The brief facts of the case are that petitioner was enrolled in 19th Punjab Regiment as Sepoy. He was posted in Uri Sector in

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

Jammu & Kashmir till 26th November, 1969 when he was boarded out on medical grounds. According to the petitioner, he was enrolled in Army at the age of 18 years and was medically fit at the time of enrollment. He served the respondents for seven years and 22 days on regular rolls. In March 1965 when he was playing Basketball match he sustained injury and his left jaw was broken. He was taken to 92 GH Srinagar and thereafter shifted to 26 GH New Delhi and then to INS Ashwani Hospital, Bombay and Tata Memorial Hospital, Bombay. He got treatment in the aforesaid Hospitals and was put before the Medical Board who downgraded his medical category EEE (E) (Permanent). He was sent to Merrut Cantt from where he was medically boarded out and discharged from the Army w.e.f. 26th November, 1969.

3. The petitioner made a claim for grant of disability pension to respondent No.2 who forwarded his claim to respondent No.3. Lateron, he was informed that his case for grant of disability pension forwarded by respondent No.2 to respondent No.3 was misplaced and he should make and submit fresh claim. The petitioner requested respondent No.2 to forward his disability pension claim as he apprehended that his entire case has not been forwarded by respondent No.2 to respondent No.3. The petitioner received order dated 6th May, 1986 conveyed by Under Secretary, Government of India whereby he was informed that his claim for disability pension was rejected. The petitioner preferred an appeal against the rejection of his claim for disability pension, which was also rejected by order dated 6th November, 1987. Thereafter petitioner made another appeal

to Director of Infantry Records, Army Headquarters, DHQ, New Delhi but he did not receive any reply from the respondents. The petitioner thereafter sent letter dated 11th March, 1996 to the authority concerned to find out the result of his appeal. Thereafter, the petitioner received a communication dated 12th March, 1996 and he was informed that his claim for the grant of disability pension was rejected on the ground that his disability was not regarded attributable to / aggravated by Military service. The petitioner after issuing legal notice filed the writ petition.

4. The respondents contested the claim of the petitioner by filing reply. It was admitted that the petitioner has been invalidated out of service through Invalidating Board who placed him in medical category "EEE". According to the respondents, the petitioner suffered from 'HAFMANGIO ENDOTHELIOMA MENDIBLE (LT)' disease to the extent of 40% for a period of two years by Invalidating Board held at Military Hospital Merrut on 28th October, 1969. The claim of the petitioner for the grant of disability pension was submitted by the authorities to respondent No.3 who rejected the same on 11th February, 1970 on the ground that the disability is not attributable to Military service and that the petitioner does not fulfil the conditions, namely, that the disability existed before or arose during Military service and has been or remained aggravated thereby. Respondents pleaded that the medical examination at the time of recruitment was not a detailed examination but the said medical examination was done only for the purpose of determining general fitness. The petitioner remained under treatment in different Hospitals for the disease from March 1965 onwards. The petitioner was finally boarded out from the

service on the recommendation of the Medical Authority. The petitioner is not entitled to disability pension under Rule 173 of Pension Regulations for the Army (Vol-I), 1961.

5. The learned Single Judge allowed the writ petition of petitioner, as stated above. The respondents filed the appeal against the impugned judgment. On 25th November, 2003 the appeal was admitted on a limited question. The order passed by the Court on 25th November, 2003 while admitting the appeal is as follows:-

> "Heard learned counsel for the parties.
>
> The limited question which may fall for our consideration in this appeal ultimately would be as to whether the respondent can be held entitled to the arrears of the disability pension and that too confined to the ground of laches.
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> On the aforesaid limited question, this appeal is admitted."

6. We have heard the learned counsel for the parties and have also gone through the record.

7. As per order dated 25th November, 2003 in the appeal, the only point for consideration is whether the petitioner is entitled to the arrears of the disability pension on the ground of laches. The petitioner was boarded out from Army service on 26th November, 1969. He made various representations and submitted appeals as noticed above. The petitioner was informed vide communication dated 12th March, 1996 Annexure P-4 that his claim for grant of disability pension was rejected. The petitioner was pursuing his claim for disability pension with the authorities diligently and when he was

ultimately informed vide Annexure P-4 dated 12th March, 1996 he filed the writ petition on 30th September, 1997. The petitioner was boarded out from service on medical ground, therefore, keeping in view this fact, it cannot be said that the writ petition filed by him on 30th September, 1997 suffers from delay and laches.

8. The pension is not a bounty but a valuable right of Government servant as has been held in ***D.S. Nakara & Others vs. Union of India, (1983) 1 SCC 305*** and ***State of W.B. vs. Haresh C. Banerjee & Others, (2006) 7 SCC 651***. It has been held by the learned Single Judge that the petitioner is entitled to disability pension. The so called delay and laches have not created any third party rights. In equity also, the petitioner is entitled to disability pension right from very beginning when he was boarded out from service on medical grounds. Therefore, keeping in view the facts and circumstances of the case, the writ petition filed by petitioner is not hit by delay and laches and he is entitled to disability pension from the day he was boarded out from Military service, hence no fault can be found with the impugned judgment which is upheld.

9. No other point was urged.

10. In view of the above discussion, the appeal is dismissed with no order as to costs.

(Kuldip Singh),J. ***(V.K. Ahuja),J.***

April 13, 2007
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